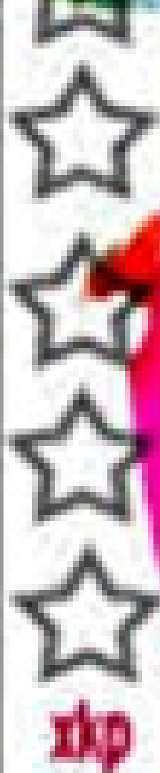


An Introduction to

The Islamic Shari'ah

sayyid Muhammad Rizvi

بسم الله الرحمن الرحیم

An Introduction to The Islamic Shariah

:Writer

Muhammad Rizvi

:Published in print

Ansariyan

:Digital Publisher

Ghaemiyeh center of computerized researches

Contents

Contents ----- ۵
An Introduction to The Islamic Shari'ah ----- ۷
BOOK ID ----- ۷
point ----- ۷
Preface ----- ۷
The Shari'ah ----- ۹
The Place of Shari'ah in Islam ----- ۹
?What is the need for the Shari'ah ----- ۱۰
The Superiority or God-made Laws over the Man-made Laws ----- ۱۱
?How to Live by the Shari'ah ----- ۱۳
During the Days of the Prophet ----- ۱۳
During the Days of the Imams ----- ۱۵
During the Ghaybat of the Present Imam ----- ۱۹
Summary ----- ۱۹
Taqlid, Following The Expert ----- ۲۰
point ----- ۲۰
The Meaning of Taqlid ----- ۲۰
?Is Taqlid Reasonable ----- ۲۰
Support from the Qur'an Sunnah ----- ۲۳
Qualifications of a Mujtahid ----- ۲۷
?How Can a Believer Know who is a Mujtahid ----- ۲۹
Differences among the Mujtahids in their Legal Opinions ----- ۳۰
The Tendency of Rationalizing The Shari'ah Laws ----- ۳۲

point ۳۲

The Scope of Rationalization ۳۳

The Categories of Shari' ah Laws ۳۵

The Right Approach ۳۹

The System of Ijtihad ۴۳

Some Important Terms ۴۳

The Importance of Ijtihad ۴۴

?Was not Ijtihad forbidden in the Early Shi'ah Sources ۴۷

The Process of Ijtihad ۴۸

A. Usulu'l-Fiqh ۴۹

point ۴۹

Convincing (Qat'i) Non-Convincing (Dhanni) Souces ۴۹

Legal (Shar'i) Rational ('Aqli) Proofs ۵۱

point ۵۱

Dalil Shar'i .۱ ۵۲

A) The Linguistic Problems) ۵۲

:B) The Problems of Authenticity) ۵۴

:Examples of how a mujtahid comes to know of a Legal Proof ۵۵

:Dalil 'Aqli .۲ ۵۶

(The Procedural Rules (Al-Usulu'l-'Amaliyyah ۵۷

The Problem of Contradiction ۵۹

B. Fiqh ۶۱

A Look into the Future of Ijtihad ۶۶

About center ۷۰

An Introduction to The Islamic Shari’ah

BOOK ID

Title : An introduction to the Islamic Shari'ah

Author(s) : Muhammad Rizvi

Congress Classification: BP١٥٩.٨.R٣٥٠۴٩٣

Dewey Classification: ٢٩٧٣١٢

National bibliography numbers: M٧۴-۵۴٨٧

Author(s): Sayyid Muhammad Rizvi

Publisher(s): Ansariyan Publications – Qum

Category: General

Featured Category: Muslim Practices

point

In this text, Sayyid Muhammad Rizvi has outlined the fundamentals of Shari'ah and how to live by the teachings and laws of Islam. He discusses Taqlid, understanding of the laws and the reasoning behind them, and even the concept of Ijtihad.

Preface

The present work attempts to familiarize the readers with the shari'ah, the Islamic legal system. Chapters One and Two define the need for the shari'ah and explain how a Muslim can live by following the shari'ah. Chapter Three is on taqlid: a process in which the lay Shi'ahs follow the legal opinions of a living mujtahid (the expert of shari'ah). Chapter Four deals with trend of rationalizing every shari' ah law. Finally, Chapter Five, brings the reader closer to the system which a mujtahid uses in reaching to his opinions.

The first chapter is presented here for the first time. Chapter Two is a revised version of what I had written as an introduction to my book “The Ritual Spiritual Purity (١٩٨٩)”.

Chapters Three to Five are revised editions of booklets printed in the early- and mid-eighties in "The Laws of Shari'ah" series in Vancouver, BC. This series was very well received by the readers in various parts of the world. Imam Mahdi Association of Bombay has translated three booklets (which now form the last three chapters of this book) in Urdu and is using them as text for

p: ١

.its study circle programs

.I pray to Allah (S.W.T.) to make this work even more useful than the previous editions

Rabi'u 'l-Awwal ١۴١٣

September ١٩٩٢

S.M. Rizvi

Toronto, Canada

The Shari'ah

The Place of Shari'ah in Islam

The word "shari'ah" literally means "a way." In Islamic terminology, it means the legal system of Islam. In this book, however, we will translate the word shari'ah as the laws of .Islam or the Islamic laws

Islam is a din -- a religion." What does a Muslim mean when he uses the word din or" religion in this sentence? Does it mean just "believing" in the fundamentals of Islam? Or does it mean just "living" according to the teachings of Islam without actually believing in God? No, both these explanations are incomplete. The word din or religion, when used for .Islam, means believing in the fundamentals as well as living according to the Islamic laws

This concept of religion is beautifully conveyed in the terms used by Islamic scholars to describe the fundamental beliefs and the practical laws of Islam. The "beliefs" are described as "the roots of religion" (usulu 'd-din). The "shari'ah laws" are described as "the branches of religion" (furu' 'd-din). Beliefs without practice is incomplete Islam; and .practice without belief may be useful in this world but not of much use in the hereafter

The shari'ah is a complete way of life; no aspect of human life is outside its domain. Islam expects a Muslim to follow its laws in every aspect of life: personal and familial, religious ,and social

moral and political, economic and business, etc. After all, "Muslim" means one who .submits to God

:The Qur'an says

When Allah' and His Messenger have decreed a matter, it is not for any believing man or believing woman to have a choice in their affair. And whosoever disobeys Allah and His (Messenger has gone astray into clear error. (Surah Al-Ahzaab, ٣٣:٣۶

?What is the need for the Shari'ah

Man's nature dictates that he can only function properly within a society, and a society depends for its existence on laws and regulations. Islam teaches that God has sent a series of messengers and prophets with divine laws for man's guidance from the very first day of his creation. The last Messenger was Prophet Muhammad (may peace and blessings of God be upon him and his family) who brought the final and the perfect mes .sage, Islam, as a guide for mankind till the end of time

Many people think there is no need for God-made laws, we can make laws by ourselves. Islam believes that human being is a very sophisticated creature; and since he has not made his own body, nor did he create the world in which he lives, he, therefore, is not the best candidate for making laws about himself. Common sense says that when you a buy a complicated equipment (for example, a computer), you should use it according to the "instruction manual" prepared by the manufacturer of that particular machine. To learn ,the computer by trial and error is not the smart way. Similarly

p: ٣

.God as the Creator of man and the earth knows better how the human being should live

The "instruction manual" that God sent for us is known as the Qur'an. But human being is not just any ordinary machine; rather he is more complicated than the most advanced computer a human can ever produce. So God did not only send the Qur'an -- He also sent an instructor known as Prophet Muhammad (PBUH). The Prophet of Islam brought the Qur'an to us and also provided practical examples in his own life. According to Shi'ah Islam, after the Prophet, the Imams of Ahlul-Bayt are the protectors of the Qur'an and .the interpreters of its laws

The Superiority or God-made Laws over the Man-made Laws

At this point, I would like to point out the superiority of the Islamic laws over the man-made laws. Man-made laws are by necessity influenced by the law-makers' social and racial biases. The United Nations Organisation is the best example of how policies are enforced only when it suits the interest of the super-powers. The rule of the game in ".man-made laws is not honesty and justice, it is "the might is right

:God-made laws are superior because of the following facts

;God is above class status

;God is above racial prejudice

;God is above the gender rivalry

.God, as the Creator, fully knows the humans as well as the world in which they live

God-made laws will be just and based on fully informed decision. Let me demonstrate the superiority of God-made laws by using the example of capital

.punishment

The secular system always swings according to the mood of the people: sometimes, the people feel that capital punishment for murder is not right and so they pressure their representatives to vote against capital punishment. But when crime rates increase and serial murder cases occur more frequently, public opinion changes and the legislators are .influenced in favour of capital punishment

Actually both sides of this issue reflect the Judeo-Christian basis of the Western society. Judaism, on the one hand, insists on the principle of justice which demands "an eye for an eye". On the other hand, Christianity promotes the principle of mercy by saying "turn thy ."other cheek

Islam, the final version of God-made laws, takes a balanced look at the issue of capital punishment and has beautifully accommodated both the principles of justice and mercy in its system. The Western system did not realize the difference between the two principles of justice and mercy: while justice can be demanded and legislated, mercy cannot be forced or made into a law. You can always plead for mercy but you can never demand .mercy

Islam takes this difference into full consideration, and, therefore, it talks about the capital punishment on two different levels: legal and moral. On the legal level, it sanctions the principle of justice by giving the right of retaliation to the victim. But, immediately, the Qur'an moves on to the moral level and strongly recommends the victim to forgo his right of retaliation and either to forgive the criminal

p: ۵

or to settle for a monetary compensation. This issue has been clearly' mentioned in the :following verse of the Qur'an

In it (the Torah), We wrote to them: "A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and there is retaliation for wounds." But (before you act according to your right, remember that) whosoever forgoes (his right of retaliation), it (shall be an expiation for him (against his own sins). (Surah al-Maaida, ۵:۴۵

Thus Islam has very beautifully provided the legal safeguard for human life on the social level and also encouraged mercy from a moral point of view on the individual level. If human beings are left on their own in this issue, they will always swing between the two extremes of justice and mercy -- only Islam, the final version of God-made legal system .can accommodate both these principles

?How to Live by the Shari'ah

During the Days of the Prophet

The Muslims during the days of the Prophet Muhammad (PBUH) lived by the shari'ah by .following the Qur'an and the sunnah. Sunnah means the example of the Prophet

Was not the Qur'an enough on its own? The Qur'an is a book of guidance which was sent for the entire human world till the end of time. As such, it only deals with the general issues and mentions only the basic principles underlying the Muslim way of life. The Qur'an is more like a constitution than a book of law. The details were left

:to the Prophet (PBUH). This is quite clear from the following verses of the Qur'an

He raised up among the common people a Messenger from among themselves to recite to them His revelations, to purify them, and to teach them the Book and the wisdom. ((Surah al-Jumu'a, ۶۲:۲

And We have revealed to you (۰ Muhammad) the Reminder (that is, the Qur'an) so you may clarify to the people what has been revealed to them, and so that they may reflect .((Sura an-Nahl, ۱۶:۴۴

These two verses definitely prove that Prophet Muhammad (PBUH) was not just a 'mail-man' whose only job was to deliver the Qur'an to us. He was a teacher and a :commentator of the Qur'an. Even his actions are a source of guidance for Muslims

You have a good example in Allah's Messenger for whosoever hopes for God and the last .(day, and remembers God oft (Surah al-Ahzaab, ۳۳:۲۱

The obedience to the Prophet (PBUH) has been considered as the proof of loving Allah :((SWT

Say (OMuhammad), 'If you love Allah, then follow me; (if you do so) Allah will love you and .(forgive for you your sins.' (Surah aal-'Imraan, ۳:۳۱

,To show the importance of obeying the Prophet (PBUH), Allah (SWT) further says

(Whoever obeys the Prophet has surely obeyed Allah. (Surah an-Nisaa, ۴:۸۰

The Qur'an is not only silent on the details of things which can change over time, it is also silent on the rules of worship which can never change. For example, the Qur'an in

p: ۷

twenty-five different places commands the Muslims to say the daily prayers (salat), but not once has Allah (SWT) explained how the Muslims are to say their prayers. (The only exception is that of salatu 'l-khawf, the prayer said in a battle-field or when one is in danger.) This silence on the part of the Qur'an, I believe, was for the specific purpose of forcing the people to go to the Prophet (PBUH), ask him for details and follow his example.

During the Days of the Imams

After the Prophet's death, the Muslims were very much divided on the issue of leadership. This gave birth to the two groups known as the Shi'ahs and the Sunnis. The Shi' ahs believed in the leadership of Imam' Ali bin Abi Talib (a.s.) and the Sunnis believed in the leadership of Abu Bakr.

The Shi'ahs lived by the shari'ah by following the Qur'an, and the sunnah of the Prophet and of the imams.

The sunnah, in Shi'ah definition, means "the sayings, deeds and silent approval of the Prophet and the twelve Imams of Ahlul-Bayt." Although the issue of the leadership is beyond the scope of this study, I would like to mention one reason why the Imams of Ahlul-Bayt are preferable as the source of the shari' ah than anyone else.

The Muslims of the early days realized the importance of the Prophet's sunnah and started to memorize his sayings known as hadith. Later generations preserved the saying they had heard from the companions of the Prophet in the books of hadith.

p: ۸

Even the actions of the Prophet, observed by his companions, were preserved in writing. But this process of preserving the sunnah of the Prophet was not immune from mistakes and forgery. Many sayings were invented and wrongfully attributed to the Prophet during the early period of the Islamic history, specially during the Umayyid era. At times, the rulers bribed the companions to fabricate 'hadith' in their favour. At other times, some people invented ahadith for apparently good causes not realizing that they were using wrong means of trying to make people more religious!

In this background of the early development of hadith, we must find an authentic and informed source for the sunnah of the Prophet. When you look at the Muslims of the Prophet's days, you can find no one who was more knowledgeable, informed, reliable and closer to the Prophet than the Ahlul-Bayt, the family of the Prophet: Fatimah, 'Ali and their sons. After all, it is the Qur' an which testifies to their spiritual purity of the highest form by saying,

"Verily Allah intends to purify you, O Ahlul-Bayt, a thorough purification." (Surah al-Ahzaab, ۳۳:۳۳)[۱]

Combine this verse about the Ahlul-Bayt's purity with the following:

"It is the holy Qur'an in a preserved tablet, none shall touch it but the purified ones." (Surah al-Waqia, ۵۶:۷۹)

The real sense of this verse is that the Qur'an which is "in a preserved tablet" is not accessible to anyone except those who are purified by Him. This shows that the

---

۱- For details on this verse, see Rizvi, S.S.A., Imamat: the Vicegerency of the Prophet (Tehran: Wofis, ۱۹۸۴) pp.۴۹-۵۴

Ahlul-Bayt could understand the Qur'an better than any other Muslim. It is for this very reason that Allah (SWT) commanded His Messenger to ask the people to love his Ahlul-:Bayt

Say (٠ Muhammad), 'I do not ask from you any reward (for teachinf Islam to you) except" (to love my near ones.'" (Surah ash-Shura, ۴۲:۲۳)(۱)

This love was made obligatory because it would automatically entail obedience of those whom one loves. If the Ahlul-Bayt were not truthful, reliable, and worthy of following, ?would Allah(SWT) command us to love them

These few verses are enough to show that the best commentators of the Qur' an and the most authentic source for the Prophet's sunnah are the Imams of Ahlul-Bayt. The Prophet (PBUH) himself said, "I am leaving among you two worthy things. As long as you hold fast on to them both, you will never go astray after me. One is greater than the other: the Book of Allah (which is a rope suspended from the heaven to the earth) and my descendants, my Ahlul-Bayt. They will not separate from each other until they come to me at the (fountain of) Kawthar (in the hereafter). Therefore, see how you recompense ."me by the way you deal with them

This is not the place to discuss the authenticity of this hadith, but it will suffice to quote Ibn Hajar al-Makki, a famous Sunni polemicist. After recording this hadith from various companions who had heard it from the Prophet at various places and

p: ۱۰

For details on the love for the Ahlul Bayt, see Mutahhari, M., Wilayah: the Station of the -۱ .Master (Tehran: Wofis, ۱۹۸۲) p.۵۰-۶۲

times, Ibn Hajar says, "And there is no contradiction in these [numerous reports] since there was nothing to prevent the Prophet from repeating [this statement] at those various places because of the importance of the holy Book and the pure Family." (۱)

We can conclude from these verses and the hadith mentioned above that the Ahlul-Bayt are the divinely appointed commentators of the Qur' an, and the most authentic and the best source for the sunnah. It is for this reason that we prefer them to all other sources. Even when we quote a hadith from the Imams of Ahlul-Bayt, it is actually the hadith of the Prophet which they have preserved as the true successors of the last Messenger of God.

Imam Ja'far as-Sadiq (a.s.) says, "My hadith is the hadith of my father, the hadith of my father is that of my grandfather, the hadithof my grandfather is that of Husayn [bin' Ali], the hadith of Husayn is that of Hasan [bin 'Ali], the hadith of Hasan is that of Amiru 'l-mu'minin ['Abi bin Abi Talib], the hadith of Amiru 'l-mu'minin is that of the Messenger of God (s.a.w.), and the hadith of the Messenger is a statement of Allah, the Almighty, the Great." (۲)

The historical circumstances did not allow the opportunity to the first three Imams of Ahlul-Bayt to teach and train their followers in the matters of the shari'ah. It was after the tragedy of Karbala that the Imams, especially the fifth and the sixth Imams, got

p: ۱۱

۱- Al-Makki, Ibn Hajar, as-Sawd'iqu 'l-Muhriqah, chapter ۱۱, section ۱. Also see S.S.A. Rizvi, Imamat; Sharafu 'd-Din a۱-Musawi, The Right Path; and S.M.H. Jafry, The Origin and Early Development of Shi'a Islam.

۲- In Shi'ah sources, see al-Kulayni, al-Usul mina 'l-Kafi, vol. ۱ (Tehran: Daru 'l-Kutubi 'l-Islamiyyah, ۱۳۸۸ AH) p. ۵۲; in Sunni sources, see ash-Sha'rani, at-Tabaqatu 'l-Kubra, vol. ۱, p. ۲۸; Abu Nu'aym, Hilyatu 'l-Awliya', vol. ۳, p. ۱۹۳, ۱۹۷.

the opportunity to formally train their followers in the shari'ah laws. The training by these Imams actually laid the foundation for the development of ijtihad and taqlid among the .(.Shi'ahs after the occultation of the twelfth Imam Muhammad al-Mahdi (a.s

During the Ghaybat of the Present Imam

During the Minor Occultation (ghaybat) of the present Imam, it was still possible for the Shi'ahs to present their problems to the Imam through his specially appointed representatives. These representatives were 'Uthman bin Sa'id al-'Amri (۲۶۰-۲۶۵ A.H./ ۸۷۵-۸۷۹ C.E.), Muhammad bin' Uthman al-'Amri (۲۶۵-۳۰۵ A.H./ ۸۷۹-۹۱۷ C.E.), Husayn bin Ruh (۳۰۵-۳۲۶ A.H. /۹۱۷-۹۳۷ C.E.) and 'Ali bin Muhammad al-Samiri (۳۲۶-۳۲۹ A.H./ ۹۳۷-۹۴۰ C.E.(.

However, after the Imam went into the Major Occultation, the problems of the shari'ah were resolved through the process known as ijtihad and taqlid -- the two most important .ways of living by the shari'ah

Summary

During the days of the Prophet (PBUH), the Muslims lived by the shari'ah by following the .Qur'an and the sunnah

During the days of the eleven Imams and the Minor Occultation of the Present Imam, the Shi'ahs lived by the shari'ah by following the Qur'an and the sunnah of the Prophet and .the Imams

During the Major Occultation of the Present Imam, the Shi'ahs, based on the training given to them by the previous Imams, developed the system of ijtihad and taqlid. Under this system, one group of the community studies the science of Islamic laws, specializes in that field and produces mujtahids. The non-mujtahid Shi'ahs, who obviously forms the majority, follows

p: ۱۲

.the opinions of the mujtahids of their time in shari'ah matters

Taqlid, Following The Expert

point

Note: This chapter was first published in al-Serat (London: vol. IX, No. ۲, ۱۹۸۳); then it was .published as a booklet in ۱۹۸۵/ ۱۴۰۵ in Vancouver

The Meaning of Taqlid

Taqlid literally means "to follow someone", "to imitate someone". In Islamic legal terminology it means "to follow the mujtahid in religious laws." However, this following is based on an informed decision taken by the individual Shi'ah man or woman. Before you start following the opinions of a mujtahid in the shari' ah laws, you have to ascertain that .he has the required expertise and that he is of upright character

Taqlid of a mujtahid, as explained in previous chapter, is only when we do not have direct access to our Present Imam (a.s.). If the Imam had been accessible to us, then we do not .have to follow any mujtahid

?Is Taqlid Reasonable

It is not always unreasonable to follow others and to hold uncritical faith in them. We can :logically distinguish four possible forms of imitation

;that of an ignorant person by an ignorant person

;that of a learned person by a more learned person

;that of an ignorant person by a learned person

.that of a learned person by a less learned person

It is quite clear that the first three forms of imitations are unreasonable and can serve no purpose. However, the fourth kind of imitation is obviously not only reasonable, but also necessary and matter of common sense; in our everyday life we follow

and imitate others in many things; we like to feel that we are taking the advice of experts .in matters outside our own knowledge

Someone who wishes to build a house explains the basic idea of what he wants to the builder and then submits to his advice as to how he should go about the actual construction. The patient follows the treatment advised by his doctor; a litigant consults a lawyer when drawing up his case for a court. The examples are abundant; in most cases the advice is taken voluntarily, but sometimes the citizen may be required by law to seek expert advice and act upon it, before, for example, he is allowed to take some particularly dangerous drug. The clearest example is obviously in case of a legal dispute between two parties, when they are required to take their grievances before a judge and abide by his .decision if they cannot settle their dispute amicably

The practise of taqlid is an example of the same kind: the person who is not an expert in Islamic jurisprudence is legally required to follow the instructions of the expert, that is, the mujtahid. And in this case, the requirement is an obligation which must be observed, .for it is an essential part of the divine law

Once a person has come to accept Islam, it follows as a necessary consequence that he must adhere to the shari'ah either by following a mujtahid (taqlid) or by undertaking the acquisition of learning

p: ۱۴

.(and piety to such a degree that he becomes a mujtahid himself (ijtihad

Support from the Qur'an Sunnah

This sensible practise of following the mujtahid in shari'ah laws has been endorsed by .Islam

The Qur' an strongly exhorts at least a group of Muslims to devote their time and energy in studying religion. This obligation is of such importance that Allah (SWT) has exempted .such persons from the duty of jihad

:He says

It is not (right) for the believers to go forth all together (for jihad). So why should not a" party from every section of them (the believers) go forth to become learned in the .(religion?..." (Surah at-Tawba, ۹:۱۲۴

More interesting is the reason and purpose of their knowledge: " ... to warn their people when they return to them, hopefully they may beware." (Surah at-Tawba, ۹:۱۲۴) This verse divides the people into two groups: those who are learned in religious sciences and those who are not. It is the duty of the learned to "warn" (a broad term which implies advice and guidance) the common people, and it is expected of the common people to "beware" (take heed of the learned persons' advice and follow). In shari'ah matters, this process of guiding the common people is technically known as "ijtihad," and the process ".of following the guidance by the common people is technically known as "taqlid

The Imams of Ahlul-Bayt (peace be upon them all) have endorsed this system in theory :as well as in practise

,In Theory: In a famous hadith

Umar ibn Hanzalah asked Imam Ja'far as-Sadiq (a.s.) about the legality of two Shi'ahs' seeking a verdict from an illegitimate ruler (or a judge appointed by such a ruler) in a dispute over a debt or a legacy. The Imam's answer was that was absolutely forbidden to :do so; and then he read the following verse

Yet in a dispute) they desire to summon one another to the judgment of the taghut(١)") ... (though they were commanded to reject and disbelieve in him."(Surah an-Nisaa, ۴:۶۰

Then 'Umar ibn Hanzalah asked, "What the two (Shi'ahs) should do then?" The Imam replied, "They must seek out one of your own who narrates our traditions, who is versed in what is permissible and what is forbidden, who is well-acquainted with our laws and ordinances, and accept him as judge and arbiter, for I appoint him as judge over you. If the ruling which he based on our laws is rejected then this rejection will be tantamount to. ignoring the order of Allah (SWT) and rejecting us and rejecting us IS the same as (rejecting Allah (SWT), and this is the same as polytheism. (٢

In another hadith, Abi Khadijah relates that Imam Ja'far as-Sadiq (a.s.) sent him to his companions with the following message: "If a dispute or a difference occurs among you about a property, then take care not to seek judgment from those illegitimate [judges]; instead, you must seek a person who knows what is permissible and what is forbidden

p: ١۶

Taghut" means any thing or person who is followed without authorization of God or -"١ his representatives. It is used for Satan, an Idol or even a human being who misleads .others

Shaykh al-Kulayni, al-Usul mina 'l-Kafi, vol. ١ (Tehran: Daru 'l-Kutubi 'l-Islamiyyah, ١٣٧٩ -٢ AH) p.۶٧; al-Furu' mina 'l-Kafi, vol.٧, p.۴١٢. In al-Hurr al 'Amili, Wasa'ilu 'sh-Shi'ah, see .vol.١٨ (Beirut: Dar Ihyai 't-Turathi 'l-'Arabi, ١٣٩١ AH) p.٩٩

by us, for I appoint him as a judge over you. And take care that you do seek judgement (against one another with an unjust ruler."(١)

The least that these two narrations prove is that the Shi'ahs are not allowed to refer to unauthorized judges for solution to their problems, instead they are advised to seek the guidance of those who are well-versed in the teachings of the Ahlul-Bayt. In these ahadith, the practise of seeking the advice of experts in shari'ah laws is taken for (granted.(٢)

In Practise: There are several documented cases of Shi'ahs who asked the Imams of their time to appoint someone to adjudicate between them in religious problems. Such questions were raised by those who lived far from Medina or those who could not gain .access to their Imam in Medina itself

Ali ibn al-Musayyab asked Imam 'Ali ar-Riza (a.s.): "I live far away and cannot always .'١ come to you, so from whom should I take the guidance for my religion?" The Imam ... "replied, "From Zakariyyah bin Adam al-Qummi

Abdu ‘l- ‘Aziz and Hasan bin 'Ali bin Yaqtin asked Imam 'Ali ar-Riza (a.s.), "I cannot .'٢ always reach to you to ask about our problems about religious teachings. Is Yunfis bin' Abdu 'r-Rahman trustworthy enough for seeking religious guidance?" The Imam replied .in affirmative

Abdullah bin Abi Ya'fur asked Imam Ja'far as-Sadiq (a.s.), "I do not meet you all the .'٣ times nor is it possible for me to come [to you], and at

p: ١٧

A١-'Amili, Wasa'ilu 'sh-Shi'ah, vol. ١٨, p. ١٠٠ who has quoted it from at-Tusi, Tahzibu 'l- -١ .Ahkam, vol, ۶, p. ٣٠٣

Both the narrations quoted above are accepted by most of the Shi’ah scholars of fiqh -٢ and hadith. The hadith narrated by ‘Umar ibn Hanzalah is considered as a "maqbulah " (acceptable) and that by Abi Khadijah is considered as a "mash-hurah" (famous) hadith, See, for example, the par excellent mujtahid of the last century, Shaykh Murtaza al-Ansari, Kitabu ‘l-Makasib (Tabriz: ١٣٧۵ AH) p. ١۵۴. Moreover, these ahadith have been used

here as a secondary argument in favour of taqlid; they are not initiating a process but just .endorsing it

times one of our friends would come to ask a question from me for which I would have no answer." The Imam said, "What does prevent you from [seeking guidance from] Muhammad bin Muslim ath-Thaqafi, for he has heard [many ahadith] from my father and ."was respectable in his views

Shu'ayb al-'Aqraqufi asked Imam Ja'far as-Sadiq (a.s.), "Sometimes we need to ask .۴ about certain things, so whom should we ask?" The Imam replied, "Take guidance from ([Abu Basir] al-Asadi."(١

These few examples prove beyond doubt that the practise of seeking the guidance of those who are well versed in religion has been practically endorsed by the Imams of .(.Ahlul-Bayt (a.s

Let me end this section with the statement of Imam Muhammad al-Mahdi (a.s.) in answer to a letter sent by Ishaq bin Ya'qub. The Present Imam (a.s.) says, "As for the newly occurring circumstances, you should turn (for guidance) to the narrators of our hadith, for (they are my proof over you and I am Allah's proof."(٢

Qualifications of a Mujtahid

Becoming an expert in fiqh and other Islamic sciences is not in itself enough for .qualification as a mujtahid whom the lay Shi' ahs can follow

In addition to this expertise, the Shi' ah laws lay down that a mujtahid should be an Ithna-'Ashari Shi'ah and ‘Adil. 'Adil can be translated as "just", but it includes other moral and legal qualities such as piety and abstention from all that the shari'ah forbids and .fulfillment of all its obligations

Imam Hasan al-'Askari (a.s.) quotes

.Wasa’ilu sh-Shi’ah, vol. ١٨, pp. ١٠۶, ١٠٧, ١٠۵, ١٠٣ -١

Shaykh as-Saduq, Kamalu ‘d-Din wa Tamamu ‘n-Ni’mah (Tehran: Maktabatu 's-Saduq, -٢ ١٣٩۵ AH) p. ۴٨۴; Shaykh at-Tusi, Kitabu ‘l-Ghaybah (Najaf: Maktabatu 's-Sadiq, ١٣٨۵ AH) p. ١٧٧; at-Tabrasi, al-Ihtijaj, vol. ٢ (Najaf: Daru ‘n-Nu’man, ١٩۶۶) p. ٢٨٣. The text quoted above

is from at-Tabrasi (c ۶th cent. AH). There is a variation in the last part of this hadith in books of at-Tusi (٣٨۵-۴۶٠ AH) and as-Saduq (d. ٣٨١). Shaykh at-Tusi's version says, " ... and I am Allah's proof over you" referring to all Shi'ahs whereas Shaykh as-Saduq's version says, " ... and I am A١lah's proof over them" referring to the mujtahids only. Saduq's version, who lived before Tusi, leaves absolutely no room for the speculation done by a contemporary writer (Sachedina, Islamic Messianism, p. ١٠١) that Tusi's version "seems to have been tampered with" by the 'ulama' of later or Safavid period (١٠th cent. AH) to !promote their own power and status

a long hadith from Imam Ja'far as-Sadiq (a.s.) in which the latter condemned the Jews for following the rabbis. Then the Imam said, "And, similarly, if the lay people of our ummah know in their fuqaha' (۱) open sinfulness, strong racial solidarity, greed for the vanities of this world and its forbidden things, opposition to their opponents who deserve to be helped, and help to their supporters who deserve to be opposed, then whoever from our people follow such fuqaha', then they are like the Jews who have been condemned for ."following their rabbis

Then the Imam says: "But if there is anyone among the fuqaha' who is in control over his own self, protects his religion, suppresses his evil desires and is obedient to the com “.(mands of his Master, then the people should follow him (yuqalliduhu

And these qualities will not be found except in some Shi'ah fuqaha',not all of them..."(۲)" These conditions in general and the above hadith in particular, make it incumbent upon .the believers to be vigilant

?How Can a Believer Know who is a Mujtahid

:There are three recognized ways by which a person can discover who is a mujtahid

;by his own personal knowledge if he is himself a religious scholar

;by the testimony of two 'adil and knowledgeable persons to someone's being a mujtahid

.by a degree of popularity which leaves no doubt about a person's being a mujtahid

Once a mujtahid is followed by the Shi'ah community, he is known as marja'u 't-taqlid -- .one to whom people refer in taqlid

Most present

p: ۱۹

۱- .Fuqaha' is plural of faqih which means expert of Islamic laws, mujtahids

۲- .At-Tabrasi, al-Ihtijaj, vol. ۲, p. ۲۶۴

day 'ulama' maintain that it is highly desirable not to just follow any mujtahid but to follow a mujtahid who is al-a'lam. In a general sense this means "the most learned", but in this specific context it means the mujtahid who has the greatest expertise in deriving the rulings of the shari' ah from its sources. The a'lam may be recognized in any of the three .ways mentioned above

However, it is sometimes difficult for the Shiah 'ulama' to distinguish who among all the prominent mujtahids is the most learned, and, as a result, more than one mujtahid may be followed in taqlid at one time (though not, of course, by the same person). This has been the case in the seventies and the eighties; but such multiplicity rarely results in any .practical disagreement on legal matters within the Shi'ah community

Differences among the Mujtahids in their Legal Opinions

Many people wonder why it is that the mujtahids sometimes differ in their religious .opinions, or fatwas, when the bases of their ijtihad are the same

Firstly, any difference in the fatwas is never such as to be contradictory; it is almost impossible to find a case of one mujtahid saying some action is wajib and another saying .it is haram

Take, for instance, the case of the Friday prayer (salatu 'l-jum'ah). All Shi'ah mujtahids believe that in the presence of the ma'sum Imam, this salat is obligatory on Fridays because it is the Imam or his representative who has the right to call the people to the Friday

prayer; but they differ as to what is the correct course of action when the Imam is in .Occultation

The late Ayatullah Sayyid Muhsin al-Hakim (d. ١٩٧٠) was of the opinion that salatu 'l-jum'ah is not obligatory during the Occultation of the Imam, but it does not matter if someone performs it supposing that it is expected of him, if he also prays the noon prayer (salatu 'z-zuhr). Ayatullah Sayyid Abul Qasim al-Khu'i says that "one can choose between performing salatu 'z-zuhr or salatu 'l-jum'ah; but once the latter is established with all its ."conditions (fulfilled), then it is precautionarily obligatory (ihtiyat wajib) to participate in it

Ayatullah Sayyid Ruhullah al-Khumayni says that "one can choose between performing salatu 'z-zuhr or salatu 'l-jum'ah; but if one chooses the latter, then it is advisable (mustahab) to precautionarily perform salatu 'z-zuhr also." Although there are differences in the opinions of these mujtahids, there is no clash that would, for example, .prevent the followers of one of them participating in salatu 'l-jum'ah if it were established

Secondly, the existence of differences in scientific opinions is not to be taken as a sign of a substantial defect in the quest for knowledge and a reason for abandoning it altogether; it is, rather, a sign that knowledge moves in progressive steps towards perfection. .Differences of opinions are to be found in all sciences, not just in fiqh

There may, for example, be more than one opinion about the therapy for a particular patient's disease, and all

p: ٢١

of these opinions may be superseded later on by the development of a new method of dealing with that disease. Thus these observations can be seen to be relevant not only to differences between the opinions of contemporary scientists but also to historical differences, and all these differences should be regarded as signs of the dynamism within .a science and as stages to be passed in its route to perfection

It should be remembered that the mujtahid formulates his opinions after pushing his research and study as far as he can; that is all that is expected of him, for he is neither inerrant (ma'sum) nor knower of the unseen ('alimu 'l-ghayb). If the available sources of the shari'ah lead a mujtahid to a particular conclusion and, let us suppose that on the judgement, he comes to know that the actual shariah law was something else -- then neither will he be punished for issuing that fatwa nor will his followers be punished for .acting accordingly, because both had done what was humanly possible for them to do

The Tendency of Rationalizing The Shari'ah Laws

point

.(Note: This chapter was first published in ۱۹۸۴ (Vancouver), and then in ۱۹۸۵ (Vancouver

Why we have to pray five times a day? Why dogs and pigs are regarded as ritually impure animals? Why an animal slaughtered un-Islamically is forbidden and ritually impure? These are but a few of the many questions asked by our youths about the shari' ah laws. They want to rationalize every law of the shari'ah; they

.want to know the reason and purpose of the legislation of these laws

This chapter deals with this tendency and attempts to explain the validity or otherwise of such a trend. Before explaining the validity or otherwise of rationalizing the shari' ah laws, .I would like to clarify the fundamental attitude of a Muslim towards the shari'ah

The Scope of Rationalization

Islam is a din -religion. Din means a complete way of life consisting of beliefs and laws (both legal and moral). To find the Islamic attitude about understanding religion, we have to study the Qur' an and the sunnah. In the Qur' an and the sunnah, we find two different :attitudes towards two different aspects of din. These two aspects of din are

,a) the fundamental beliefs known as usul ' d-din -- the roots of religion)

.b) the shari' ah laws known in general as furu'u ' d-din -- the branches of religion)

As for the "roots" of religion, Islam expects the Muslims to hold their belief in the fundamentals of their religion after attaining conviction of their truth through examination and reflection. The Qur'an clearly condemns those who follow others blindly :in matters of beliefs

There is no compulsion in the religion (of Islam because) truly the right path has become (clearly distinct from error. (Surah al-Baqara, ٢:٢٥۶

:Again the Qur'an says

And when it is said to them, "Come to what Allah has sent down, and (to) the Messenger," ."they say, "Enough for us is what we found our fathers doings

p: ٢٣

What, even if their fathers had knowledge of naught and were not rightly-guided? (Surah al-Maaida, ٥:١٠٤)

This strong condemnation of the idol-worshippers for following their fore-fathers blindly has been repeated elsewhere:

And when it is said to them, "Follow what Allah has sent down," they say, "No, but we will follow such things as we found our fathers doing." (Surah al-Baqara, ٢:١٧٠; Surah Luqman, ٣١:٢٠)

Islam says that one may consider the views and opinions of others, but that one should only accept that which is reasonable to believe:

"So (O Muhammad) give good tidings to My servants who give ear to the word and follow the fairest of it. Those are the ones whom Allah has guided, and those are men possessed of minds." (Surah az-Zumar, ٣٩:١٧)

Likewise, in the books of ahadith we find the Prophet and the Imams of Ahlul-Bayt using intellectual arguments in matters of belief to convince their opponents or the seekers of truth. This itself is an example and sunnah for the Muslims to base their belief on understanding and conviction.

But as for the "branches" of religion, Islam expects absolute obedience from the Muslims. The reason for this expectation is very obvious: Once a person has believed, by his own free-will, in Allah as the Creator and the Wise Author of laws, in Muhammad as the infallible Messenger of Allah, and in the Qur'an as the authentic message of Allah-then it follows as a necessary consequence that he must adhere to the

.shari' ah laws

This absolute obedience about the shari'ah laws can be inferred from the following :verses

It behooves not a believing man and a believing woman that they should have any choice" in their affairs when Allah and His Messenger have decided a matter; and whosoever disobeys Allah and His Messenger, he surely has strayed off a manifest straying." (Surah (al-Ahzaab, ۳۳:۳۶

O you who believe! Do not take precedence before Allah and His Messenger (in shari'ah" (matters), and fear Allah; surely Allah is Hearing, Knowing." (Surah al-Hujuraat, ۴۹:۱

O you who believe! Obey Allah, obey the Messenger and those who are in authority" (among you (i.e., the Imams)." (Surah an-Nisaa', ۴:۵۹

(We have not sent a Messenger but to be obeyed." (Surah an-Nisaa', ۴:۶۴"

To summarize: In Islamic beliefs, a Muslim is expected to believe only after reflection; .and in Islamic laws, he is expected to follow them without any reservations

The Categories of Shari' ah Laws

Now we come to the problem that why such and such law of the shari'ah was legislated. Considering the reasons and purposes of the laws, the shari'ah can be divided into four :categories

The laws whose reasons and purposes are self evident: For example, helping the needy .۱ is highly recommended; killing is forbidden; lying is evil; paying taxes like khums and zakat is obligatory. One does not need any expertise or extraordinary intelligence to know that helping the needy is good, paying taxes is necessary for preserving the financial equilibrium in the society; and that killing and

.lying is evil

The laws whose reasons and purposes have been explained in the Qur'an and hadith: .٢ For example, intoxicants are forbidden, interest is prohibited, fasting in Ramadhan is .obligatory and prayers are a must

The Quran and hadith have said that intoxicant is one of the main causes of evil because an intoxicated person is no longer in control of himself. Although it took the world a long time and a bitter experience to realize the wide-spread harm of drunkenness, Islam declared its harm and evil fourteen centuries ago by saying

(its sin is greater than its profit." (Surah al-Baqara, ٢:٢١٩"

Interest is forbidden in Islam. The Qur' an and hadith have explained the harm of interest. Interest leads to destruction of the poor section of the society, and all wealth gravitates (towards the already wealthy group.(١

Fasting is a physical and spiritual training which brings the servants of Allah (SWT) nearer .to Him and makes them more obedient to the shari'ah

:(Prayers is a means of expressing our gratitude to Allah (SWT

O you who believe! Eat of the good things that We have provided you with and thank" (;Allah." (Surah al-Baqara, ٢:١٧٢

:it is an important way of achieving peace of mind

(;surely by Allah's remembrance are the hearts set at rest." (Surah ar-Ra'ad, ١٣:٢٨"

and it is also a very effective method of making the believer more obedient to the laws of :Islam

(surely the prayer keeps (one) away from indecency and evil." (Surah al-Ankaboot, ٢٩:۴۵ "

There

p: ٢۶

For a detailed discussion on interest, see 'Allamah Tabataba'i, al-Mizan trans. S.S.A. - ١
.Rizvi, vol. ۴ (Tehran: Wofis, ١٩٨٢) pp. ٢٩۵-٣٠٣

are many ahadith of our Imams explaining the reasons and purposes of many laws of the shari'ah. Shaykh as-Saduq, the famous Shi'ite scholar, has collected many of these .'ahadith in his 'Ilalu 'sh-Sharaya

The laws whose reasons and purposes have not been explained in the Qur'an or hadith, .٣ but the rising horizon of human knowledge have helped in understanding their purpose and usefulness. For example, why pork is forbidden(١); why circumcision is highly recommended by the shari'ah, and why only the fish which have scales is permitted in .Shi'ah fiqh

For the benefit of circumcision, we quote Sherman Silber who says that: "There are a number of reasons why circumcision is beneficial and why it ought best be performed in infancy. First, it prevents cancer of the penis in later life. Cancer of penis generally occurs when there has been carelessness in taking care of one's foreskin. A second benefit of circumcision is that the wives of circumcised men are less commonly afflicted with cancer of the cervix. The most common benefit of circumcision is that it prevents accumulation of oils and secretions (called smegma) under the foreskin, which lead to infection, swelling, (and sometimes contraction of the foreskin so the tip of the penis is trapped inside.(٢

About the fish, it has been said that the fish that do not have scales are harmful to human beings. Based on that research, American troops in the east were directed that "tropical ."marine fishes without scales were to be left alone

p: ٢٧

.(For a detailed discussion on pork, see S.S.A. Rizvi, Pork, (Tehran: Wofis, ١٩٧١ -١

.Sherman Silber, The Male (New York: ١٩٨١) pp. ١١٥-١١۶ -٢

It must be mentioned here that the reasons of the shari'ah laws which have been discovered by human knowledge cannot be regarded as the actual reason (ratio legis) for the legislation of those laws, because the human knowledge is still in its infancy whereas Islam, the final shari' ah of Allah (SWT), is to stay in practise up to the end of this world. However, the scientific facts can be used to explain the usefulness and benefits of the .shari'ah laws

The laws whose reasons and purposes have neither been explained in the Qur'an and .۴ hadith, nor the new advancement in human knowledge has been able to explain them: For example, why four rak'ats (cycles) in noon, afternoon and night prayers while only .three in evening and two in subh prayers

The Right Approach

As far as the first three types of shari'ah laws are concerned, there is not much problem in explaining their reasons and purposes. The problem arises when one starts to .rationalize the laws which come under the fourth category

On the laws of the fourth category, the only thing which can be said is that a Muslim should have complete faith that there surely are useful purposes in these types of laws. The purpose can be of material or spiritual nature, or both. Why should we have such a ?confidence in these laws of the shari'ah

Because, we, the Shi'ah Ithna 'Ashari Muslims, believe that all the actions of Allah (SWT) have purpose, and that they are for the benefit

p: ۲۸

of human beings; and this includes the laws of the shari'ah.(۱) On basis of this belief, we must have confidence that all His laws (including those whose purposes are still unknown to us) have a purpose and benefit for human beings.

One more thing which must be clarified at this point is that it is not only the responsibility of the 'ulama' (the scholars of Islamic religious sciences) to discover and explain the purpose and reason underlying the shari'ah laws. Their primary duty is to explain the shari'ah laws to the people. The responsibility for discovering and explaining the purposes of the shari' ah laws must equally be shared by the Muslim intellectuals who are experts of modern science.

Unfortunately, very few of the Muslim intellectuals are interested in this aspect of the shari'ah, and those who are interested lack the knowledge of the Qur'an and hadith. A bridge must be built between the religious and worldly sciences; and, thanks be to Allah, some small steps in that direction have been taken in last few years.

The belief that although we might not know the reason and purpose of a certain shari' ah law, it surely has a good reason and useful purpose behind it can be understood from the following episode in the Qur' an. This episode also shows that if we are made aware of its reasons, we would readily admit that it was the very right thing to do.

One day while preaching to his people, Prophet

۱- See 'Allamah Hilli, al-Babu 'l-Hadi 'Ashar trans. W.M. Miller, (London: Luzac, ۱۹۵۸) pp.۴۵-۴۶; S.S.A. Rizvi, Justice of God (New Jersey: Pyam-e Aman, ۱۹۹۲) chap. ۱.

Musa (a.s.) thought about himself that Allah has given him a great privilege and that he is the most learned among the mankind. Allah was not pleased with even such a slight indication of pride in Musa's mind, and so Jibrail was sent to inform Musa that there is a person, among the servants of Allah, who is more learned than him. He was also given an address to go and meet this more learned person. Musa, along with one of his disciples, went to meet the learned person who has not been named in the Qur'an but our ahadith .identify him as Khizr

:The Qur'an narrates in (Surah al-Kahf, ۱۸:۶۰-۸۲) the details of their meeting

Musa: "Can I follow you so that you may teach me the right knowledge of what you have (by Allah)?"been taught

Khizr: "Surely you cannot have patience with me. How can you have patience in (the things or actions) of which you do not have a comprehensive knowledge?"

."Musa: "If Allah wills, you will find me patient and I shall not disobey you in any matter

Khizr: "If you would follow me, then do not question me about anything until I speak to ."you about it

So they went their way until they reached a river where they embarked on a boat. When .they were close to their destination, Khizr made a hole in the boat

Musa: "Have you made a hole in it to drown its inmates? Surely you have done a

."grievous thing

"?Khizr: "Did I not say that you will not be able to have patience with me

Musa: "O Khizr, do not blame me for what I forgot, and do not constrain me to a difficult ."thing in my affair

.Then they went on until they met a young man. Khizr killed that person

Musa: "Have you killed an innocent person who had not killed anyone? Certainly you have ."done an evil thing

."Khizr: "Didn't I say to you that you will not be able to have patience with me

Musa: "If I ask you about anything after this, then do not keep me in your company; indeed, you shall then have found an excuse in my case (to dismiss me from your .("company

They went on until they came to a town. They asked food from the people of that town, but no one accepted them as guests. In that town, they found a wall which was on the .point of falling in ruin, so Khizr repaired the wall and put it into the right state

."Musa: "If you had wished, you might certainly have taken a payment for this work

Khizr: "This is the parting between you and me. But before you leave, I will inform you of :the significance of my actions which you could not understand

As for the boat, it belonged to some poor men who worked on the river. I wished to - make the boat slightly defective because a king was coming

.behind them who seized every perfect boat by force

As for the young man, his parents were believers and I feared lest he would oppress - them by rebellion and disbelief. And we desired that their Lord might give them in his .place a better one than him in purity and nearer to having compassion

As for the wall, it belonged to two orphan boys in the city, and there was beneath it a - treasure belonging to them; so I rebuilt the wall because your Lord desired that when they attain maturity, they should take out their treasure, which was a mercy from your .Lord

And moreover, I did not do it of my accord. This is the significance of that on which you" ."could not have patience

(Surah al-Kahf, ۱۸:۶۰-۸۲)

There are many morals in this story. What is relevant to our discussion is that if a great Prophet of Allah like Musa (a.s.) could not fully comprehend the significance of the actions of a fellow human being who was more learned than him, then how can we expect to know the wisdom and purpose of every shari'ah law which has been legislated by Allah (SWT), the Wise, the Omniscient and the Omnipotent Creator of the humans and the !world in which they live

The System of Ijtihad

Some Important Terms

Ijtihad literally means "to endeavor, strive, put oneself out, work hard." In Islamic legal ".terminology it means "the process of deriving the laws of the shari'ah from its sources

Mujtahid means a person

p: ۳۲

.who does ijtihad or who is an expert of Islamic laws

Fiqh literally means knowledge, and in Islamic terminology it means the science of Islamic .laws

Faqih (pl. fuqaha') means the expert of fiqh. The terms "mujtahid" and "faqih" mean the .same

The Importance of Ijtihad

Is ijtihad necessary? If Islam is a religion which is to stay till the end of time, then there must always be some people who can guide the Muslims in the changing circumstances of time and of place. After the Prophet of Islam (PBUH), the most ideal persons to guide Muslims were the Imams of Ahlul-Bayt. However, the Present Imam, Muhammad al-Mahdi (a.s.) has gone into the Occultation and will re-appear when Allah (SWT) wishes him to appear. So what is to be done in the mean-time? Are the Shi'ahs to suspend the .shari'ah? No, of course, not! Islam is the religion for all times and places

The Imams of Ahlul-Bayt had foreseen the time of the Occultation and had prepared their followers for the situation in which they will not be in direct contact with their Imam. This preparation was done by training the Shi'ahs in the science of Islamic laws, or in other words, in ijtihad. Ijtihad is an essential phenomenon for the survival of the Islamic shari'ah during the Occultation of the Imam (a.s.). Without the system of ijtihad, we would .not be able to apply Islamic laws in the rapidly changing circumstances of human society

Ijtihad is not only permissible, but essential from the Islamic

p: ۳۳

point of view. It is an obligation in Islam to study everything which is necessary for the spiritual development and material well-being of the Muslim community. However, this obligation is of the category which is known as wajib kifa'i, meaning "an obligation which is on every member of the community as long as it is unfulfilled; but as soon as some person or persons has fulfilled it, it is no longer an obligation on those who have not ".fulfilled it

In the present instance, for example, Islamic society needs experts in the medical sciences, in physics and chemistry, in engineering, education; and as long as there is a lack of expertise in these areas, it is an obligation on the community as a whole to acquire it. This means that a group of Muslims must devote themselves to research so as to benefit the Islamic people. Similarly, an Islamic society without experts in the shari'ah cannot properly consider itself Islamic, and so it is an obligation for a group of persons from this society to devote themselves to the study of the religious sciences to provide .proper guidance to all Muslims

This is such an important obligation that Allah (SWT) has exempted those who go to seek :religious knowledge from the duty of jihad. He says

It is not (right) for the believers to go forth all together (for jihad). So why should not a" party from every section of them (the believers) go forth to become learned in the

religion, and to warn their people when they return to them-so that haply they may (beware?" (Surah at-Tawba, ۹:۱۲۴

It is clear from many narrations that the Imams of Ahlul-Bayt (a.s.) used to be pleased whenever any of their companions taught religion or gave legal rulings (fatwa) to others. There are several documented cases of Shi'ahs who lived far from Medina asking the Imam of their time to appoint someone in their area to adjudicate between them in religious problems: Zakariyyah ibn Adam al-Qummi and Yunus ibn' Abdu 'r-Rahman, for example, were named by Imam 'Ali ar-Riza (a.s.), to solve disputes in their own districts. ((۱

In a famous hadith, 'Umar ibn Hanzalah asked Imam Ja'far as-Sadiq (a.s.) about the legality of two Shi'ahs seeking a verdict from an illegitimate ruler in a dispute over a debt or a legacy. The Imam's answer was that it was absolutely forbidden to do so. Then Ibn :Hanzalah asked what the two should do, and the Imam replied

They must seek out one of your own who narrates our traditions, who is versed in what" is permissible and what is forbidden, who is well-acquainted with our laws and (ordinances, and accept him as judge and arbiter, for I appoint him as judge over you..."(۲

Besides these ahadith, we have quite a few sayings of the Imams which tell us what to do if we come across two ahadith which are contradictory or semi-contradictory and solving the contradictory ahadith is one of the functions of ijtihad. These

p: ۳۵

Al-'Amili, Shaykh Hurr, Wasa'ilu 'sh-Shi'ah, vol. ۱۸ (Beirut: Dar Ihyai 't-Turathi 'l-Islami, -۱ .۱۳۹۱ AH) p.۱۰۶-۱۰۷

Al-Kulayni, al-Furu' min al-Kafi, vol. ۷, p.۴۱۲ -۲

types of ahadith are known as al-akhbar al-‘ilajiyyah, the ahadith which solve the .problems in the process of ijtihad

What we have mentioned above clearly shows that ijtihad is necessary for the perpetuity .of the Islamic legal system

?Was not Ijtihad forbidden in the Early Shi’ah Sources

There are some sayings of the Shi'ah Imams (a.s.), some writings of their companions and that of our early 'ulama which severely condemn the use of ijtihad. This has created confusion among non-specialist readers and has given rise to the question whether or .not ijtihad was permitted in Shi'ah Islam

This confusion can be easily sorted out by studying the changes undergone by the word "ijtihad". The word ijtihad was used for the first time by a Sunni school of fiqh in the meaning of ra'iy: Ra'iy means "a subjective opinion, an opinion based on one's personal judgement as opposed to that of the Qur'an and the hadith." In this sense, "ijtihad" was by itself an independent source of the shari'ah laws besides the Qur'an and the sunnah. Abu Hanifah, the founder of the Sunni Hanafi school of fiqh, was the main proponent of this system of ijtihad.(۱) The term ijtihad continued to be used exclusively in the meaning .of ra'iy up until the early seventh Islamic century

In the seventh Islamic century, some of the Shi'ah 'ulama' started using the term ijtihad in a different and new meaning. They used the term “ijtihad” for "the process of deriving the "laws of the shari'ah from its sources". In the first meaning, "ijtihad

p: ۳۶

---

۱ - Istihsan, istislah or maslahah, and ta’awwul are different forms of ijtihad in the meaning of ra’iy. All these terms mean the application of personal discretion in legal .decisions

stands alongside the Qur' an and the sunnah as an independent source of the shari'ah laws; in its new meaning, "ijtihad" is a process of deriving the shari' ah laws from the Qur' an and the sunnah. The first Shi'ah scholar to use the term "ijtihad" in its new meaning was Muhaqqiq al-Hilli (d. ۶۷۶ A.H.) in his al-Ma'arij. Al-Hilli says, "ijtihad means to strive for (deriving the shari'ah laws from their sources."(۱

The change through which the meaning of "ijtihad" has undergone clears the confusion about the legality of ijtihad: some of the sayings of the Imams (a.s.), the writings of their companions and the early Shi'ah ulama condemn ijtihad in its pre-۷th century meaning of "ra'iy"; they are not opposing the ijtihad in the post-۷th century meaning of "the process of deriving the shari'ah laws from their sources". The condemned ijtihad is a source of the shari'ah laws, while the recommended ijtihad is only the process of deriving the shari'ah laws from their sources. The permissibility of ijtihad in its post-۷th century meaning is .beyond any doubt

The Process of Ijtihad

The process of deriving the shari'ah laws from their sources is based on two main branches of Islamic sciences: usulu'l-fiqh and fiqh. "Usulu'l-fiqh " is the science of the method of deriving the shari'ah laws -- it is the methodology of ijtihad. "Fiqh" is the practice of ijtihad -- it is the process of deriving the shari'ah laws. In usulu'l-fiqh, the mujtahid studies the method of ijtihad; in fiqh, he uses

---

See as-Sadr, S. Muhammad Baqir, Durus fi 'Ilmi 'l-'Usul, vol. ۱ (Beirut: Daru 'l-Kitab, ۱۹۷۸) -۱ pp, ۵۵-۶۰; also see Mutahhari, M., "Ijtihad dar Islam," in Bahsi dar-barah-e Marji'iyyat wa Ruhaniyyat (Tehran: Shirkat-e Intishar, ۲nd edt.) pp. ۳۷-۴۲. Mutahhari mentions 'Allamah Hilli (d. ۷۲۶ AH) as the first user of the term ijtihad in its new meaning but Sadr has shown .that it was used before 'Allarnah by his uncle the Muhaqqiq al-Hilli

that method to derive the shari'ah laws. Thus, usulu'l-fiqh is the theory of ijtihad whereas .fiqh is the practice of ijtihad

In the following pages, I would like to give an outline of usulu'l-fiqh and fiqh to familiarize .the reader with the system of ijtihad

A. Usulu'l-Fiqh

point

The first and fore-most issue to be discussed in usulu'l-fiqh is about "the binding authority of conviction" (hujjiyyatu'l-qat'). The validity of conviction is determined by intellectual reasoning. This is the corner-stone of ijtihad; it means that the main basis of determining a source of shari'ah is to see whether or not one can achieve conviction about the laws .derived from that source

If a mujtahid finds that a particular source for example, the Qur' an, is such that he can achieve conviction about the laws derived from it, then such a source is considered by him as a valid and reliable source for ijtihad. This process divides the potential sources of .shari'ah laws into two: convincing and non-convincing

Convincing (Qat'i) Non-Convincing (Dhanni) Souces

In examining the potential sources of the shari'ah, a mujtahid may find two kinds of sources: either the source creates conviction about the laws derived from it or not. In the first case, it is known as dalil qat'i – a convincing proof, a cogent proof, a proof which creates conviction about the proven laws. In the second case, the source is named as dalil .dhanni-- a presumptive proof, a proof based on mere assumption

The mujtahid will consider the dalil qat'i (the convincing proof) as a valid

source for the shari'ah laws. But he will not consider the dalil dhanni as such because dalil dhanni does not create conviction it just gives rise to assumption. A mujtahid cannot rely on a dhanni proof or source for deriving laws unless the shari'ah itself approves its use for this purpose. Below I will give examples of two dhanni sources, one approved by the .shari'ah and another disapproved by it

The First Example: Among the various categories of hadith, there is a category known as khabar wahid thiqah - a hadith reported by a single reliable person. Khabar wahid thiqah is a dhanni source. Why? Because a hadith reported by a single person does not create conviction about its contents even if the reporter is reliable; there is the chance of forgetting, misunderstanding or unintended misquotation on the part of the truthful, .reliable reporter

However, in spite of being a dhanni source, khabar wahid thiqah is considered by most of Shi'ah mujtahids as a valid source for the shari'ah laws. Why? Because the shari'ah itself has approved it. Verse six of Chapter forty nine (Surah al-Hujuraat, ۶:۴۹) says that if a single report (khabar wahid) comes from an unreliable (fasiq) reporter, then it should not be accepted without further verification. The implication of this verse is that if a single report comes from a reliable (thiqah) reporter, then accept it without any need for further verification. Therefore, the mujtahids accept the single hadith narrated by a reliable reporter as a

p: ۳۹

.source for shari'ah laws because the Qur'an has implicitly approved it

The Second Example: One of the dhanni sources for the shari'ah laws is qiyas. In Islamic laws, qiyas means analogy. In qiyas, you look at a shari'ah law for one issue and then apply it to another issue because of the similarity that exists between the two. Let us suppose that "wine is haram" is a proven law of the shari'ah. You then look at beer and say that 'beer is like wine'; and then you apply the law of wine on beer -- here the .prohibition of beer has been proved on basis of qiyas

Qiyas is a dhanni proof, it does not create conviction because one cannot always know the real reason ('illah in Arabic, ratio legis in Latin) of the shari'ah laws. And since the qat'i sources of the shari'ah have not approved the use of qiyas as a way of deriving Islamic (laws, qiyas is not accepted by our mujtahids as a valid source for shari' ah laws.(۱

However, according to most mujtahids, if the shari'ah has explicitly explained the ratio legis ('illah) of a particular law, then the mujtahid can generalize that law for other similar things by the means of qiyas. And in such cases, it is known as qiyas mansusi’l-illah -- an .(analogy based on the ratio legis explicitly explained (by the shari'ah

Legal (Shar’i) Rational ('Aqli) Proofs

point

All sources of the shari'ah, whether qat'i or dhanni, can be of two types: dalil shar'i and .dalil 'aqli

p: ۴۰

---

۱ - For the saying of the Imams of Ahlul-Bayt in rejection of Qiyas as a source of the .shari’ah laws, see the last chapter of Wasa’ilu ‘sh-Shi’ah, vol. ۱۸

Dalil Shar'i means a source which emanates from religious texts; we may translate it as ."legal proof". Dalil 'aqli means a source which emanates from intellectual arguments

Dalil Shar'i .۱

Dalil Shar'i or the Legal Proof. The dalil shar'i consists of the Qur' an and the sunnah -- the two main sources of the shari'ah. The dalil shar'i is divided into two: (a) Oral Proof like the Our'an and the hadith. (b) Non-Oral Proof like the practice of the ma'sum and his 'silent approval' of the action done in his presence. The silent approval of a ma'sum is known as "taqrir". However, even the non-oral proof reaches to us through the oral reports of the witnesses; therefore, for all practical purpose, both the oral and non-oral proofs are on .the same level

In order-to use the Legal Proofs in ijtihad, the mujtahid has to study the following issues :in Usulu'l-Fiqh

A) The Linguistic Problems)

:Some of the questions studied in this area are

?Should I take all the words in dalil shar'i in their literal meaning

?Are metaphorical meanings of any use in dalil shar'i or not

What are the imperative forms of words and what are their implications: does a ?command to do something automatically means the one is forbidden from its opposite

What are the implications of the unconditional use of the word: do we generalize its ?contents

?What is the implication of a conditional sentence: do we restrict its application

What are the implications of a nass? (N ass means an oral proof containing a word which (.has only one meaning

What

are the implications ofa mujmal? (Mujmal means an oral proof containing a word which has more than one meaning and is used in those meanings equally.)

How do we use the context of the sentence to understand the mujmal word? For example, the word "yad" is used in the Qur'an in the verses of wudu, tayammum and punishment for theft. The word "yad" means palms, forearm and hand. So how do you interpret the word "yad" in such verses? Well, in the verse of wudu it is simple because we have a context; the verse says that wash your "yad up to the elbows". The context ("up to the elbow") helps us in understanding the meaning of "yad" in the verse of wudu.

:B) The Problems of Authenticity)

The mujtahid has also to study the ways of determining the authenticity of the Legal Proofs. This problem has given rise to the development of two sciences known as 'Ilmu 'r-Rijal and Dirayatu 'l-Hadith.

Ilmu 'r-Rijal literally means 'knowledge about men,' it deals with the biography and' character of the narrators of hadith. On basis of this knowledge, the 'ulama' classify the narrators in different categories; and these categories in turn help in classifying the hadith as authentic or acceptable or weak or fabricated or unreliable, etc. There are at least ۳۸ different classifications of hadith.

Dirayatu ' l-Hadith means the science of hadith, and it deals mostly with the "chain of narration" as a whole instead of the individual narrators. This science helps the mujtahid in classifying certain

narrators into groups and expedites their judgement about hadith narrated through those particular channels.

Examples of how a mujtahid comes to know of a Legal Proof:

i. Tawatur: a narration reported by so many people that the very number of its reporters is enough to create conviction about the truth of its contents. A hadith or an account of a ma'sum's narrated in such a way is known as mutawatir.

ii. Khabar wahid thiqah: a hadith narrated by a single reliable narrator. We have already mentioned khabar wahid thiqah earlier.

iii. Siratun mutasharri'ah: the general attitude or practice of the religiously-minded companions of our Imams about a particular issue which is not found in the existing hadith literature. This' general attitude or practice' is known as siratun mutasharri'ah. This sirah indicates that an oral proof must have existed during their time. For example, if the prominent companions of Imam Ja'far as-Sadiq (a.s.) did not attend the Friday prayers led by persons appointed by the rulers, then their attitude proves that the Friday prayer behind a person appointed by an illegitimate government is not valid otherwise, the Imam would have objected to the actions of his companions.

iv. Ijma': 'means consensus. In Usulu'l-Fiqh, it refers to the consensus of the early Shi'ah 'ulama' on an issue which is not found in the existing hadith literature. Such an ijma' indicates that an oral proof must have existed in their time on which they based their ruling. In Shi'ah jurisprudence, ijma' is not by itself a source of the shari'ah; instead, it is a means

p: ۴۳

.of proving the existence of an oral proof which is now extinct

:Dalil 'Aqli .۲

Dalil 'aqli means the intellectual reasoning or rational argument. In Usulu'l-Fiqh, dalil 'aqli means the intellectual prepositions which can be used as a source of deriving shari'ah laws. However, the scope of intellectual prepositions in

shari'ah is limited; it is not like ijtihad bi 'r-ra'iy (application of independent opinion). The intellectual prepositions are only used for deriving the details of the shari'ah laws which .exist

For example, one such intellectual preposition says, "If an act is made obligatory (wajib) by the shari'ah, then it automatically follows that its essential preliminaries are also wajib." This intellectual preposition is known in Arabic as "muqaddimatu 'l-wajib, wajibun", So if the shari'ah says, "Hajj is wajib," then the mujtahid can use the above mentioned intellectual preposition and derive the following laws: to travel to Mecca is wajib; to acquire the means of transportation is wajib, and to apply for a passport is wajib .-- because without these preliminaries, hajj would be not be possible

The intellectual prepositions which are used in ijtihad are formed by studying, among :other things, the following relationships between the shari'ah laws

i. The relationship between haram (forbidden) and batil (invalid): if an act is haram, is it ?automatically batil also

ii. The relationship between haram (forbidden) and sahih (valid): can an act be valid but ?haram at the same time

iii. The relationship between legislation of a law (ja'l) and its application on an individual .((fi'liyyah

iv. The

.relationship between the laws and those on whom they are to be applied

v. The relationship between laws and its essential preliminaries as explained in the .example of hajj

(The Procedural Rules (Al-Usulu'l-'Amaliyyah

After defining the sources of the shari'ah, the mujtahid has to set up a mechanism to solve the problems which have not been mentioned in the Qur'an and the sunnah. For example, when a mujtahid looks into his sources for the ruling on smoking, he does not find anything specific on it. In Usulu 'l-Fiqh, the mujtahid establishes some "procedural rules" or "practical principles" which he will use in such cases. These rules or principles ".are known as "al-usulu 'l-'amaliyyah

The Usulu 'l-'Amaliyyah are four: asalatu 'l-istishab; asalatu 'l-bara'ah; asalatu 'l-ihtiyat; .and asalatu 't-takhyir

Asalatu 'l-Istishab means the principle or rule of continuity. This principle is used in a case in which a person has "a previous certainty" and "a present doubt" about the same thing. For example, there is a glass of water on my table. I am sure that it was ritually pure (tahir) in the morning, but now I doubt in its ritual purity. The principle of istishab says that act on your previous certainty and ignore your present doubt because doubt cannot over-ride certainty.

This procedural rule has been taken from the following hadith of Imam Ja'far as-Sadiq (a.s.) who said in the answer to Zurarah that "doubt cannot over-ride certainty; it can be ".over-ridden only by another certainty

Asalatu 'l-Bara'ah means the principle of exoneration. This procedural rule is

applied in a case which has not been mentioned, explicitly or implicitly, in the sources of the shari'ah. Asalatu 'l-Bara'ah says that since the shari'ah has no opinion in this issue, the Muslims are free to do whatever they like. For example, when dealing with the question of smoking, the mujtahid does not find any opinion about it in the sources of shari'ah. In such a case, he would apply the principle of exoneration and say that ."''Smoking is not haram

Asalatu ' l-Ihtiyat means the principle of precaution. This principle is applied in a case where there is only partial knowledge about the law; that is, in cases of al-'ilmu 'l-ijmali -- where there is a semi-doubt and a semi-certainty. In such cases, the shari'ah expects us to act precautionarily. A most familiar example where this principle is applied is the case of Friday prayer during the major occultation of the Present Imam. We know that on Fridays, one of the two prayers -either Friday prayer or noon prayer- is definitely wajib, but we do not know which one. Application of asalatu 'l-ihtiyat in this case would mean that it is precautionarily better to pray both prayers to ensure that we have performed .what was expected of us

The last procedural rule is known as Asalatu 't-Takhyir. Asalatu 't-Takhyir which means the principle of choice. This principle is applied in cases similar to that of asalatu 'l-ihtiyat, that is, semi-doubt and semi certainty. However, the principle of choice is

applied where it is not possible to act on both sides of the issue. For example, when dealing with the noon or Friday prayer issue, some mujtahids may conclude that saying both prayers is not practical and specifying one without a clear evidence is not correct -- therefore, they apply the principle of choice and say that one can say either Friday prayer .or noon prayer

The Problem of Contradiction

The last topic to be discussed in Usulu 'l-Fiqh deals with the problem of contradiction in the proofs of the shari'ah. The mujtahid has to layout a mechanism which he will use in case he comes upon contradiction in his sources. Our Imams have given quite a few guidelines to solve such problems; as mentioned earlier, the ahadith dealing with these .problems are known as al-akhbaru 'l-ilajiyyah

The contradiction between the proofs can be found in different forms and has to be solved in different ways: (a) The contradiction between two oral-proofs can occur in :following ways

:a) The contradiction between two oral-proofs can occur in following ways)

A nass and a hadith with an "apparent" meaning: the former is preferred over the latter. For example, one hadith says, "Pray (salli) the mid-night prayer;" and another hadith says, "Mid-night prayer is recommended (mustahab)." The first example is of a hadith with an "apparent" meaning: it contains the word "pray" in imperative form which is used both for obligatory acts as well as for recommendation. The second example is of a hadith :which is a nass

p: ۴۷

it contains the words "recommended" which only means that the act is recommended and not wajib. In this case, the nass will be preferred and used as a qualifier for the ."apparent" hadith

One is of a general nature and the other is conditional: the conditional proof curbs the generalization of the former. For example, one hadith says, "If you break your oath, then you must free a slave;" whereas another hadith says, "If you break your oath, then you must free a Muslim slave." The second hadith will be preferred and used to curb the .general implication of the first hadith

One deals with the legislation of laws and the other restricts its application on certain individuals: the later over-rides the former. For example, one hadith says, "Respect the 'ulama;" while another hadith says, "Do not respect the fasiq 'ulama." The latter hadith .limits the application of the former hadith

b) If two authentic ahadith contradict each other in such a way that it is not possible to) .reconcile them together, then both are to be discarded

c) If the contradiction is between "convincing oralproof' and an non-oral, non-convincing) .proof, then the former is preferred

d) If there is contradiction between a convincing proof and a dhanni proof on the one) hand and a procedural rule on the other, then the former is accepted because the latter is .applied only when there is no proof at all

e) If there is a contradiction between the principles of bara'ah and of)

.istishab, then the latter is preferred

B. Fiqh

In fiqh, the mujtahid derives the shari'ah laws from the sources determined by him in .Usulu 'l-Fiqh

All the issues discussed in fiqh are traditionally classified into four main groups. This classification was made by Muhaqqiq al-Hilli (d. ۶۷۶ A.H.) in his famous work of jurisprudence Sharaya'u 'l-Islam, The following is a list of the subjects discussed in fiqh :according to the traditional classification

:Group One: 'Ibadat -- the Acts of Worship

Cleanliness

Prayers

Fasting

Wealth Tax

Annual Tax

Pilgrimage

Jihad

.Bidding the good and forbidding the evil

:Group Two: 'Uqud --Mutual Contracts

'(Business transaction (bay

(Mortgage (rahn

(Bankruptcy (muflis

(Limitation of one's legal competence (hajr

(Liability (ziman

(Compromise in financial disputes (sulh

(Partnership (shirkah

(Silent Partnership in trade (mudarabah

(Silent Partnership in agriculture (muzara'ah musaqat

(Trusts (wadi'ah

(Lending ('ariyah

(Hiring (ijarah

(Representing Others (wikalah

(Endowments (waqf

(Deeds of Gifts (hibah

(Making of Wills (wisayah

.(Marriage (nikah

:Group Three: 'Iyqa'at --Unilateral Instigations

(Divorce (talaq

('Marital Disputes (khul', mubarat, dhihar, ly'an, iyla

(Emancipation of slaves (itq

(Confessions in legal matters (iqrar

(Reward (ja'alah

.(Vows (yamin

:Group Four: Ahkam -- Miscellaneous

(Hunting and Slaughtering (sayd and dhibahah

(Eating and Drinking (at'imah and ashribah

(Misappropriation (ghasb

(Neighbour's and Partner's first right to buy (shaf'ih

(Revival of virgin land (ihya'u 'l-mawat

(Inheritance (irth

(Arbitration (qada

(Testimony (shahadah

(Punishment (hudud

(Retaliation (qisas

.(Blood-money or indemnity for bodily injury (diyah

This was the old classification which has been used with slight changes till the present time. Here I would like to present a modern classification of fiqhi issues done by the late Sayyid Muhammad Baqir as-Sadr in his

p: ۴۹

al-Fatawa al-Wadihah.(۱) Ayatullah as-Sadr of Najaf, Iraq was a shinning star among the new generation mujtahids; unfortunately the Shi'ah world was deprived of his knowledge and leadership when he was tortured and killed by Saddam's regime in ۱۹۸۱. According to his classification, which we hope will be adopted by the fiqhi circles of our time all the :shari'ah laws are divided into four groups

:Group One: ‘Ibadat -- the Acts of Worship

Cleanliness

Prayers

Fasting

Pilgrimage to Mecca

:Group Two: Financial Laws

:On Social Level

Zakat

Khums

(Land Tax (khiraj

(Tax on the non-Muslims under the protection of an Islamic government (jaziyyah

.(Spoils of war (anfal

:b) On Individual Level)

:The laws about the means of possession

revival of virgin land

hunting

by-products of one's own property

inheritance

loan

mortgage

deeds of gifts

.etc

:The laws about the use of possessions

Business transactions

Exchange of commodities based on compromise

Partnership

Endowment

Legacy

.etc

:Group Three: Personal Laws

Marriage

Divorce

Marital affairs

Eating

Drinking

Dressing

Vows

Oaths

Hunting

Slaughtering

Bidding good and forbidding evil

.etc

:Group Four: Social Laws

Governance

Judiciary

Penal Code

Jihad

.etc

We may add in the list of "social laws" the new chapter started by Ayatullah al-Khu'i known as Kitabu ‘l-Mushtarikat (the Book of Public Property)'(۲) which deals with the laws about public road, mosques, schools, welfare homes, rivers and streams, lakes and .oceans, and mines

A Look into the Future of Ijtihad

The sciences of usulu ‘l-fiqh and fiqh, like any other science, have evolved and expanded with the passage of time. But during the last hundred years, especially since the emergence of Shaykh Murtaza al-Ansari (۱۲۱۴-۱۲۸۱ A.H.), these two sciences have expanded greatly and rapidly. In light of this positive development, an idea has

---

.Sadr, S.M. Baqir, al-Fatawa al-Wadihah (Najaf, ۱۹۷۶) pp. ۴۶-۴۷ -۱

.Khu’i, S. Abu ‘l-Qasim, Minhaju ‘s-Salihiyn, vol.۲ (Najaf, ۱۳۹۴) pp. ۱۷۴-۱۸۱ -۲

been floating among the experts of fiqh since the death of Ayatullah Husayn Burujardi .about compartmentalization of ijtihad

The first person who raised this issue was Shaykh ‘Abdu ‘l-Karim Ha’iri Yazdi (۱۲۷۶-۱۳۵۵ A.H.), who has the credit of revitalizing the Hawza 'Ilmiyyah of Qum. Shaykh Ha’iri’s student, Shahid Murtaza Mutahhari brought this idea in a public forum for the first time in a speech at the seminar organized after the demise of Ayatullah Burujardi in early sixties. He says, "It is better that fiqh be divided into different compartments, and that each group, after attaining the general ability of ijtihad, should specialize in one particular area (of fiqh."(۱)

This idea is very noble. But two recent developments in the Shi'ah world have made this idea into a necessity. First, the Islamic revolution in Iran has availed an unprecedented opportunity for the Shi'ah mujtahids to work on political, economic, social and moral problems which the Shi'ah community faces in Iran. Second, the large scale migration of Muslims to the West has given rise to issues and problems which were unheard of before. Expecting a single person to fully and comprehensively provide guidance for all problems is asking for too much. The only solution for the future of the shari'ah is nothing but the .compartmentalization of ijtihad

However, this is not something which can emerge or be created overnight; it has to take its due course. After a couple of generations, hopefully, we might have mujtahids :specializing in four different areas of fiqh

.۱

p: ۵۱

.Mutahhari, “Ijtihad dar Islam,” p. ۶۱ -۱

(;Acts of worship (‘ibadat

;Economic problems .۲

;Personal laws .۳

.Social and Political issues .۴

And the Shi'ahs of that time will be doing taqliq of either four different mujtahids or of a .council of ijtihad composed of mujtahids specializing in their respective fields

In short, the dynamic spirit inherited by the Shi'ah 'ulama from their Imams will keep the .light of ijtihad shining in one form or another. The future, al-hamdulillah, is bright

p: ۵۲

About center

In the name of Allah

هَلْيَسْتَوِيالَّذِينَيَعْلَمُونَوَالَّذِينَلَايَعْلَمُونَ

?Are those who know equal to those who do not know

al-Zumar: ٩

:Introduction

Ghaemiyeh Computer Research Institute of Isfahan, from ٢٠٠٧, under the authority of Ayatollah Haj SayyedHasanFaqihImami (God blesses his soul), by sincere and daily efforts of university and seminary elites and sophisticated groups began its activities in .religious, cultural and scientific fields

:Manifesto

Ghaemiyeh Computer Research Institute of Isfahan in order to facilitate and accelerate the accessibility of researchers to the books and tools of research, in the field of Islamic science, and regarding the multiplicity and dispersion of active centers in this field and numerous and inaccessible sources by a mere scientific intention and far from any kind of social, political, tribal and personal prejudices and currents, based on performing a project in the shape of (management of produced and published works from all Shia centers) tries to provide a rich and free collection of books and research papers for the experts, and helpful contents and discussions for the educated generation and all classes .of people interested in reading, with various formats in the cyberspace

:Our Goals are

(propagating the culture and teachings of Thaqalayn (Quran and Ahlulbayt p.b.u.t-

encouraging the populace particularly the youth in investigating the religious issues-

replacing useful contents with useless ones in the cellphones, tablets and computers-

providing services for seminary and university researchers-

spreading culture study in the publich-

paving the way for the publications and authors to digitize their works-

:Policies

acting according to the legal licenses-

relationship with similar centers-

avoiding parallel working-

merely presenting scientific contents-

mentioning the sources-

.It's obvious that all the responsibilities are due to the author

:Other activities of the institute

Publication of books, booklets and other editions-

Holding book reading competitions-

Producing virtual, three dimensional exhibitions, panoramas of religious and tourism- places

.Producing animations, computer games and etc-

Launching the website with this address: www.ghaemiyeh.com-

Fabricatingdramatic and speech works-

Launching the system of answering religious, ethical and doctrinal questions-

Designing systems of accounting, media and mobile, automatic and handy systems, web- kiosks

Holding virtual educational courses for the public-

Holding virtual teacher-training courses-

Producing thousands of research software in three languages (Persian, Arabic and- English) which can be performed in computers, tablets and cellphones and available and downloadable with eight international formats: JAVA, ANDROID, EPUB, CHM, PDF, HTML, CHM, GHB on the website

Also producing four markets named "Ghaemiyeh Book Market" with Android, IOS,- WINDOWS PHONE and WINDOWS editions

:Appreciation

We would appreciate the centers, institutes, publications, authors and all honorable .friends who contributed their help and data to us to reach the holy goal we follow

:Address of the central office

Isfahan, Abdorazaq St, Haj Mohammad JafarAbadei Alley, Shahid Mohammad HasanTavakkoly Alley, Number plate ۱۲۹, first floor

Website: www.ghbook.ir

Email: Info@ghbook.ir

Central office Tel: ۰۹۱۳۲۰۰۰۱۰۹

۰۲۱ ـ Tehran Tel: ۸۸۳۱۸۷۲۲

Commerce and sale: ۰۹۱۳۲۰۰۰۱۰۹

Users' affairs: ۰۹۱۳۲۰۰۰۱۰۹

Introduction of the Center – Ghaemiyeh Digital Library